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Attorney for Plaintiff Ferrero U.S.A., Inc.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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FERRERO U.S.A., INC.,	:	
	:	
Plaintiff,	:	Civil Action No. 12-civ-4372 (SAS)
	:	
v.	:	
	:	
STARK FOODS, INC.,	:	
	:	
Defendant.	:	
----- X		

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR ORDER OF CIVIL CONTEMPT**

PLEASE TAKE NOTICE THAT, pursuant to Local Civil Rule 83.6 and the permission granted by the Court in the March 26, 2015 Pre-Motion Conference, and upon the annexed Memorandum of Law, Declaration of Beth Kotran and all pleadings and prior proceedings herein, Plaintiff Ferrero U.S.A., Inc. (“Ferrero USA”) hereby moves for an Order:

(1) declaring that Defendant Stark Foods, Inc. (“Stark”) is in civil contempt of this Court for violating the Consent Judgment Order in this action, dated July 2, 2012 and signed by the Honorable Shira A. Scheindlin (“Consent Judgment”) (ECF No. 4), and that Stark be further restrained from violating that Consent Judgment;

(2) requiring Stark to pay to Ferrero USA an amount equal to all of Stark’s profits, both before and after the entry of the Consent Judgment, generated from products which include

“the Ferrero Trademarks, the Ferrero Copyrighted Packages, and/or design described and claimed in the ‘229 Patent” as defined in the Consent Judgment;

(3) requiring Stark to pay to Ferrero USA an amount sufficient to reimburse Ferrero USA for its costs, expenses and reasonable attorneys’ fees in investigating and remedying the violation, including prosecuting this motion;

(4) requiring Stark to destroy any and all products which include “the Ferrero Trademarks, the Ferrero Copyrighted Packages, and/or design described and claimed in the ‘229 Patent” in Stark’s possession or control;

(5) referring this case to a magistrate judge for damages discovery to determine Stark’s sales and provable deductions, and Ferrero USA’s costs, expenses and attorneys’ fees and Stark’s profits; and

(6) ordering such other relief as may be just and proper.

Dated: April 8, 2015

Respectfully submitted,

/s/ Chester Rothstein

Chester Rothstein

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Attorney for Plaintiff Ferrero U.S.A., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2015, a true and correct copy of Plaintiff's **Notice of Motion and Motion for Order of Civil Contempt; Memorandum of Law in Support of Plaintiff's Motion for Order of Civil Contempt; and Declaration of Beth Kotran in Support of Plaintiff's Motion for Order of Civil Contempt** were served upon **Defendant Stark Foods, Inc.** via the Court's CM/ECF system and/or electronic mail.

Dated: April 8, 2015

/s/ Chester Rothstein

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